

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

JOSHUA INDUSTRIES, INC. AND
ARTHUR STANDISH, TRUSTEE IN BANKRUPTCY

and

Cases 9--CA--27958 and
9--CA--28299

DISTRICT 17, UNITED MINE WORKERS
OF AMERICA AND LOCAL 9553, UNITED
MINE WORKERS OF AMERICA

September 26, 1991
DECISION AND ORDER

By Chairman Stephens and Members Oviatt and Paudabaugh
Upon charges and amended charges filed by District 17, United Mine

Workers of America, and Local 9553, United Mine Workers of America (the Unions) on October 24, 1990, November 26, 1990, February 20, 1991, and April 8, 1991, the General Counsel of the National Labor Relations Board issued a consolidated complaint on April 12, 1991, against the Respondent, Joshua Industries, and its trustee in bankruptcy, Arthur Standish (Standish), alleging that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although the Respondent was properly served copies of the charges, and both the Respondent and Standish were properly served copies of the consolidated complaint, neither the Respondent nor Standish has filed an answer.

On June 24, 1991, the General Counsel filed a Motion for Summary Judgment. On June 26, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Neither the Respondent nor Standish filed a response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The consolidated complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the consolidated complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the counsel for the General Counsel, by letter dated June 6, 1991, notified the Respondent and Standish that unless an answer was received by June 13, 1991, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent is a corporation engaged in the business of coal mining in the vicinity of Logan County, West Virginia. During the 12 months preceding issuance of the consolidated complaint, a period representative of its operations at all material times, Respondent, in the course and conduct of its business operations, sold and shipped from its Logan County mines products, goods, and materials valued in excess of \$50,000 directly to W.P. Coal Co., a nonretail West Virginia enterprise, which, in turn, annually sells and ships products, goods, and materials valued in excess of \$50,000 from its West Virginia locations directly to points outside the State of West Virginia. We

find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of the Act:

All employees of [Respondent] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by [Respondent], repair and maintenance work normally performed at the mine site or at a central shop[s] of [Respondent]), and maintenance of gob piles and mine roads, and work of the type customarily related to all of above at the coal lands, coal production and coal preparation facilities owned or operated by [Respondent] excluding all coal inspectors, weight bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

At all material times, the International Union, United Mine Workers of America (the International) has been the designated collective-bargaining representative of the employees in the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements (the National Bituminous Coal Wage Agreement) between the Respondent and the International on behalf of its various districts and locals, including District 17 and Local 9553. The current agreement is effective for the period February 1, 1988, to February 1, 1993. By virtue of Section 9(a) of the Act, the International is the exclusive representative of the employees in the bargaining unit for the purposes of collective bargaining concerning rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since about August 1990, the Respondent has failed to continue in full force and effect all the terms and conditions of the collective-bargaining

find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of the Act:

All employees of [Respondent] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by [Respondent], repair and maintenance work normally performed at the mine site or at a central shop[s] of [Respondent]), and maintenance of gob piles and mine roads, and work of the type customarily related to all of above at the coal lands, coal production and coal preparation facilities owned or operated by [Respondent] excluding all coal inspectors, weight bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

At all material times, the International Union, United Mine Workers of America (the International) has been the designated collective-bargaining representative of the employees in the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements (the National Bituminous Coal Wage Agreement) between the Respondent and the International on behalf of its various districts and locals, including District 17 and Local 9553. The current agreement is effective for the period February 1, 1988, to February 1, 1993. By virtue of Section 9(a) of the Act, the International is the exclusive representative of the employees in the bargaining unit for the purposes of collective bargaining concerning rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since about August 1990, the Respondent has failed to continue in full force and effect all the terms and conditions of the collective-bargaining

agreement described above by failing to provide the unit employees with the health insurance benefits set forth in the agreement.

Since about December 1990 or January 1991, the Respondent has refused to comply with the terms of the collective-bargaining agreement above, including by its failure to provide to the unit employees the wage rates and other monetary fringe benefits required by the agreement.

The Respondent engaged in this conduct without prior notice to, or the consent of, the International. Accordingly, we find that the Respondent has refused to bargain with the International in violation of Section 8(a)(5) and (1) of the Act, as explained by Section 8(d) of the Act.

Conclusions of Law

By failing to comply with and continue in full force and effect the terms and conditions of the parties' collective-bargaining agreement, including by failing to provide unit employees with contractual health insurance benefits, contractual wage rates, and other monetary fringe benefits, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to cease its failure and refusal to comply with and continue in full force and effect the terms and conditions of the parties' collective-bargaining agreement. We shall further order the Respondent to make its employees whole for any loss of earnings and benefits suffered as a result of its failure to comply with the agreement, in accordance with the Board's decisions in Kraft Plumbing & Heating, 252 NLRB

891 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), and Ogle Protection Service, 183 NLRB 682 (1970), with interest to be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).¹

ORDER

The National Labor Relations Board orders that the Respondent, Joshua Industries, Inc., Logan County, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to comply with and continue in full force and effect the terms and conditions of its collective-bargaining agreement with the International Union, United Mine Workers of America (the International), including failing to provide unit employees with contractual health insurance benefits, contractual wage rates, and other monetary fringe benefits.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Adhere to all the terms and conditions of its collective-bargaining agreement with the International.

(b) Make whole the employees in the bargaining unit described below for any losses they have suffered because of the Respondent's unfair labor practices, in the manner set forth in the remedy section of this decision:

¹ Interest on any payments unlawfully withheld from employee benefit fund agreements shall be computed in the manner set forth in Merryweather Optical Co., 240 NLRB 1213 (1979).

All employees of [Respondent] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by [Respondent], repair and maintenance work normally performed at the mine site or at a central shop[s] of [Respondent]), and maintenance of gob piles and mine roads, and work of the type customarily related to all of above at the coal lands, coal production and coal preparation facilities owned or operated by [Respondent] excluding all coal inspectors, weight bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facilities in Logan County, West Virginia, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 26, 1991

James M. Stephens, Chairman

Clifford R. Oviatt, Jr., Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to comply with and continue in full force and effect the terms and conditions of our collective-bargaining agreement with the International Union, United Mine Workers of America, including failing to provide unit employees with contractual health insurance benefits, contractual wage rates, and other monetary fringe benefits.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL adhere to the terms and conditions of our collective-bargaining agreement with the International.

WE WILL make whole the employees in the bargaining unit described below for any losses they have suffered because of our unlawful conduct:

All employees of [the Employer] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by [the Employer], repair and maintenance work normally performed at the mine site or at a central shop[s] of [the Employer]), and maintenance of gob piles and mine roads, and work of the type customarily related to all of above at the coal lands, coal production and coal preparation facilities owned or operated by [the Employer] excluding all coal inspectors, weight bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

JOSHUA INDUSTRIES, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 550 Main Street, Room 3003, Cincinnati, Ohio 45202-3271, Telephone 513--684--3663.